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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/617,975

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David R. Payne

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TOMLINSON & O'CONNELL, P.C.  
TWO LEADERSHIP SQUARE  
211 NORTH ROBINSON, SUITE 450  
OKLAHOMA CITY, OK 73102

EXAMINER

ADDIE, RAYMOND W

ART UNIT

PAPER NUMBER

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MAIL DATE

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01/26/2009

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* DAVID R. PAYNE, GERALD A. STANGL,  
NORMAN E. STEVENS, JR., and MICHAEL F. GARD

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Application No. 10/617,975  
Technology Center 3600

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Mailed: January 26, 2009

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Before VASCO S. HARPER, *Paralegal Specialist*  
HARPER, *Paralegal Specialist*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 10, 2008. A review of the application has revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

APPEAL BRIEF, STATUS OF CLAIMS

A review of the file finds that the status of the claims as provided in the Appeal Brief filed December 28, 2007, under the heading “Status of Claims” is unclear and/or is not compliant in accordance with 37 CFR 41.37(c)(1). *The Manual of Patent Examining Procedure* (MPEP) § 1205.02 (8<sup>th</sup> ed. Rev. 6, Sept 2007) under the heading “Appeal Brief Content” states in part:

The specific items required by 37 CFR 41.37(c)(1) are:

...

(iii) *Status of Claims*. A statement of the status of all the claims in the application, or patent under reexamination, i.e., for each claim in the case, appellant must state whether it is cancelled, allowed or confirmed, rejected, withdrawn, objected to, etc. Each claim on appeal must be identified. [Emphasis added].

Appellants have not specifically identified the claims that are being appealed under this heading. An entire new brief need not, and should not, be filed. Rather, a supplemental Brief providing a corrected “Status of Claims” will suffice.

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to notify Appellants of a non-compliant brief due to the discrepancy noted above and to require Appellants to submit a supplemental Brief correcting the discrepancy, and
- 2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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